



Comptroller General  
of the United States

Washington, D.C. 20548

Pietrovito 14(06/8)

## Decision

**Matter of:** George A. Fuller Company

**File:** B-247171.2

**Date:** May 11, 1992

Francis P. Donelan, Esq., for the protester,  
Rebecca L. Kehoe, Esq., and Lionel G. Batley, Jr., Esq.,  
General Services Administration, for the agency,  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

1. In a negotiated best value procurement--in which technical considerations are more important than price--award may properly be made to the higher-rated, higher-priced awardee where the source selection authority weighed the protester's price advantage but determined that the awardee's evaluated technical superiority was worth the price premium.
2. Protest allegation that the agency did not conduct meaningful discussions is denied where there is no reasonable possibility that the protester was prejudiced by the agency's failure to inform the protester of a proposal deficiency.
3. Protest allegation that the agency's evaluation was biased because of an alleged conflict of interest involving an evaluation panel member, who is a former employee of the awardee's subcontractor, is denied where there is no evidence that the panel member exercised improper influence in the procurement for the awardee or against the protester.

### DECISION

George A. Fuller Company protests the award of a fixed-price contract to Lehrer McGovern Bovis (LMB) under request for proposals (RFP) No. GS-02P-91-CUC-0017, issued by the General Services Administration (GSA), for the design and construction of the federal courthouse in White Plains, New York. Fuller argues that it is entitled to award because of its lower offered price, that GSA failed to conduct

meaningful discussions with Fuller, and that there was a conflict of interest concerning one of the agency's evaluators.

We deny the protest.

As amended, the RFP provided for a two-phase evaluation. First, offerors' past performance and experience were evaluated on a go/no-go basis. Second, firms that satisfied the stated go/no-go requirement were qualitatively evaluated under the following technical evaluation factors stated in descending order of importance: (1) qualification of key personnel; (2) design excellence; and (3) management plan. The combined weight of technical factors was stated to be more important than price. Offerors were informed that award would be made to the offeror whose offer met all solicitation requirements and was the most advantageous to the government, price and technical factors considered.

GSA received 14 offers in response to the RFP and determined that 13 offers, including offers from LMB and Fuller, satisfied the minimum past performance and experience requirements. The proposals of these 13 firms were then qualitatively evaluated and all were found to be within the competitive range. Discussions were conducted, and best and final offer (BAFO) received. The top four ranked BAFOs were evaluated as follows:

<u>Offeror</u>	<u>Score</u> (10 pts.)	<u>Price</u> (in millions)
LMB	8.675	\$32.6
Offeror A	8.388	40.8
Offeror B	7.875	34.2
Fuller	7.588	31.5

LMB's superior technical score reflected GSA's evaluation that LMB had proposed key personnel with extensive experience in the design and construction industry, that the firm's proposed courthouse design and choice of building materials was exemplary, and that the LMB proposed a very good management plan.

Fuller's BAFO, on the other hand, was evaluated as containing numerous deficiencies. Specifically, GSA found that Fuller's proposal did not indicate design and build experience for its key personnel. Also, Fuller's proposed courthouse design was found inferior inasmuch as it: (1) did not provide for reasonable access to the jury assembly area; (2) located windows behind the judge's bench resulting in possible glare to witnesses, jurors, and counsel; (3) provided for multiple entrances that may cause security problems; (4) offered exterior material of poor

quality; and (5) did not identify its offered interior finishes as required by the RFP. Finally, Fuller's management plan, while found acceptable, was not as comprehensive as LMB's.

The source selection authority (SSA) determined that LMB's higher technical score reflected actual technical superiority and that LMB's technical superiority offset the \$1 million, or 3.3 percent, price advantage offered by Fuller's inferior proposal. The SSA concluded that LMB's proposal was the most advantageous to the government, and award was made to LMB. This protest followed.

Fuller does not protest the evaluated superiority of LMB's proposal or the relatively inferior evaluation of its own proposal, but argues that it is entitled to award on the basis of its \$1 million lower price. Fuller also contends that GSA failed to conduct meaningful discussions with it because GSA did not inform Fuller that the RFP required offerors to identify their offered interior finishes. Finally, Fuller complains that a member of the agency's evaluation panel may have a conflict of interest, inasmuch as the evaluator is a former employee of the awardee's proposed architectural subcontractor.

GSA submitted an agency report that persuasively responded to Fuller's allegations. Fuller failed to substantively respond to, or rebut in any way, GSA's explanation of its evaluation and award selection, but instead requests that we decide the protest on the existing record.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost or price unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Cost/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. ¶ 1111 (1976), 76-1 CPD ¶ 325. Award may be made to a higher-rated, higher-priced offeror where the decision is consistent with the evaluation factors and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the cost difference. See Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326.

Here, the RFP provided that technical factors were more important than price, and the unrebutted record shows that LMB's proposal was, consistent with the stated evaluation factors, evaluated as significantly technically superior to

Fuller's proposal. The SSA specifically considered Fuller's \$1 million dollar price advantage but determined that LMB's evaluated superiority was worth the 3.3 percent price premium. That is, giving due weight to the technical evaluation factors that were stated to be more important than price, the SSA weighed Fuller's price advantage against LMB's evaluated technical superiority and found that LMB's proposal was the most advantageous to the government. Fuller, while obviously disagreeing with the SSA's choice, has not shown that the SSA selection decision was unreasonable or that it was not in accordance with the stated evaluation scheme. We therefore find no basis to object to it.

Fuller also argues that GSA did not conduct meaningful discussions with it because the agency never requested that Fuller identify its offered interior finishes. GSA contends that the RFP required the identification of all building materials, including interior finishes, and that, in any event, Fuller's score would not have improved relative to LMB's evaluated superiority even if interior finishes were not evaluated.


We think that the agency, during discussions, should have noted Fuller's failure to list interior finishes as required by the RFP. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. Despite our conclusion, we will only sustain a protest challenging an agency's discussions as not meaningful where there is a reasonable possibility that the protester was prejudiced by the government's actions. See Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94. Here, given the significant overall difference in the offerors' relative technical ranking and the agency's un rebutted statement that the correction of this one evaluated deficiency would not affect the firm's relative standing, there is no reasonable possibility that Fuller was prejudiced by the agency's failure to notify Fuller that it had not listed its interior finishes as required by the RFP. Id.

Fuller also alleges one member of the agency's evaluation panel may have a conflict of interest, inasmuch as the evaluator is a former employee of the awardee's proposed architectural subcontractor. GSA admits that the panel member is a former employee of the awardee's subcontractor but denies that the evaluation panel member had a conflict of interest or that the panel member exerted any undue influence in the procurement on behalf of the awardee or against the protester.

Where, as here, a protester infers that evaluators are biased because of their past experiences or relationships, we focus on whether the individuals involved exerted improper influence in the procurement on behalf of the

awardee, or against the protester. See Advanced Sys. Tech., Inc., Eng'g and Prof. Servs., Inc., B-241530; B-241530.2; Feb. 12, 1991, 91-1 CPD ¶ 153 (no evidence of bias by evaluation panel member who was formerly employed by the awardee's subcontractor). Since Fuller has presented no evidence, and the record does not indicate, that GSA's panel member exerted any improper influence in the procurement for LMB or against Fuller, we have no basis to object to GSA's evaluation on the basis of an alleged conflict of interest.

The protest is denied.

  
for James F. Hinchman  
General Counsel